No. 423.

Office Supreme Court U.S.
FILED
NOV 10 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Motion to advance.

ISABELLA F. BLACKSTONE, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error.

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York,
Defendant in Error.

Nov. 10, 1902.

October Term, 1902.
No. 423.

Writ of Error to the Surrogates' Court of the County of New York.

MOTION TO ADVANCE.

And now comes the plaintiff in error and moves this Honorable Court to advance this cause upon the docket, and to hear it at as early a day as the convenience of the Court will permit. The reasons for this application are as follows:

This case presents questions of general public interest and of great importance, and their prompt and authoritative decision is important not only to the State of New York and to the plaintiff in error, but to the various States in the Union which have enacted succession, inheritance or transfer taxes, and to the citizens of said States. The matter involved is the liability of the plaintiff in error, a citizen and resident of the State of Illinois, and the residuary legatee and sole executrix of her husband, Timothy B. Blackstone, who died May 26, 1900, a citizen and resident of said State, to pay $77,536.09 which has been assessed against her as an

inheritance or transfer tax by the State of New York upon $4,854,127.96 of indebtedness due to said Timothy B. Blackstone at the time of his death from a trust company and a firm of private bankers in the City of New York.

In opposition to this assessment the plaintiff in error claims:

1. That these debts were intangible and were in no sense property within the State of New York within the meaning of the New York Tax Law or the principles of general jurisprudence;
2. That if such indebtedness was property within that State, it was only transitorily there, and would not be subject to taxation;
3. That an inheritance tax had already been assessed upon and collected on this indebtedness by the State of Illinois; and
4. That the imposition of any further tax by the State of New York would be in violation of the Constitution of the United States.

The Surrogates' Court of the County of New York, where the matter originated, determined, after consideration of the case, that the indebtedness in question was not subject to a tax, and entered an order declaring its exemption (35 Miscellaneous Rep. N. Y., 585). The representative of the State appealed from this order to the Appellate Division of the Supreme Court, where the order of the Surrogates' Court was reversed upon the ground that the Court of Appeals of New York had already decided these questions adversely to the plaintiff in error in the case of the Matter of Houdayer, 150 N. Y., 39 (69 App. Div., 127). The plaintiff in error then appealed from the decision of the Appellate Division of the Supreme Court to the Court of Appeals, where the opinion of the Appellate Division was affirmed on the authority of the Houdayer case, O'Brien, J., dissenting (171 N. Y., 682). The plaintiff in error has sued out this writ.

The decision of the Court of Appeals in the Matter of Houdayer, *supra*, was sought to be reviewed in this court, but the writ of error was dismissed because of the failure of the plaintiff in error to raise the constitutional questions in the courts below (Scudder v. Coler, 175 U. S. 32).

The questions above-named have never been finally determined in any court of the United States, and until they are determined by this Court will be a constant source of embarrassment to the owners of property and to the financial administration of various States in the Union. In the State of New York alone property to the amount of millions of dollars will, it is believed, be affected by the determination of this case.

In Orr v. Gilman, 183 U. S., 278, which was argued at the last term of this Court, and which involved another phase of the New York transfer tax law, the Court granted a motion to advance the cause, and in the opinion of counsel, the reasons for a similar disposition of this cause are even more cogent.

Under these circumstances counsel respectfully suggests that the questions of constitutional law involved in this case should be determined in all their aspects as speedily as the convenience of this Honorable Court will permit.

Dated October 20th, 1902.

Respectfully submitted,

Edward W. Sheldon

Counsel for Plaintiff in Error.

I hereby waive notice of the foregoing motion to advance, and join in the application therefor.

Counsel for Defendant in Error.

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Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902.
No. 423.

Writ of Error to the Surrogate's Court of the County of New York.

NOTICE OF MOTION TO ADVANCE.

SIR:

PLEASE TAKE NOTICE that the annexed motion to advance this cause will be brought on for hearing before the Justices of this Honorable Court, at a term thereof, to be held at the Capitol in the City of Washington, on the 10th day of November, 1902, at twelve o'clock, noon.

Dated November 3rd, 1902.

Yours, &c.,

Edwards W Sheldon

Counsel for Plaintiff in Error.

To JULIUS OFFENBACH, ESQ.,
Solicitor and Counsel for Defendants in Error.

No. 423.

Office Supreme Court
FILED
NOV 10 1902
JAMES H. McKENNEY,
Clerk.
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Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York,
Defendant in Error.

October Term, 1902.
No. 423.

Opposition to the Motion to Advance.

Now comes the defendants in error and oppose the application made by the plaintiff in error to advance this case upon the docket. The grounds of such opposition are as follows: This appeal is not entitled to be advanced under section 949 of the Revised Statutes of the United States or Rule 26 of this Court. The State or its representatives (defendants in error) are not applying for the advancement of this cause on the grounds that it is to collect a revenue due to the State, but, on the contrary, are opposing such application. There are no peculiar features in this appeal which entitle it to a preference.

The opposition of the defendants in error is further based upon the ground that there is an application pending to require the plaintiff in error to increase his bond of $1,000 given as a supersedeas to a decree for the sum of $77,500, and accrued penalty thereon amounting to about the sum of $20,000, which application was before Mr. Justice Peckham this day, and which application the solicitor of the defendants in error was directed to present to this court in banc by the said justice on an order to show cause to be granted therefor by Mr. Justice Peckham, returnable on the 17th day of November next.

In order to protect the interests of the defendants in error and the State of New York it is important that the questions of the increase bond should be disposed of before this motion to advance is decided, as the decision of the motion to increase the bond may result in an abandonment of this appeal by the plaintiff in error, or failing to comply with an order of this court in a dismissal thereof.

Dated November 10, 1902.

Respectfully submitted,

JULIUS OFFENBACH,
Counsel for Defendants in Error.

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Office Supreme Court U. S.
FILED
NOV 17 1902
JAMES H. McKENNEY,
Clerk.

No. 423.

Motion for a new bond.

Supreme Court of the United States.

Filed Nov. 17, 1902.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902.

No. 423.

MOTION FOR A NEW BOND.

Now come the defendants in error and move the Court that the plaintiff in error be required to file a new bond.

JULIUS OFFENBACH,
Counsel for Defendants in Error.

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Office Supreme Court U.S.
FILED
NOV 15 1902
JAMES H. McKENNEY
Clerk

No. 423.

Order as to new Road &c.

Filed Nov. 15, 1902.

SUPREME COURT OF THE UNITED STATES.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last Will and Testament of Timothy B. Blackstone, deceased,

Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,

Defendants in Error.

October Term, 1902.
No 423.

On the record herein, and on the annexed affidavit of Julius offenbach, verified on the 12th day of November, 1902, and all the proceedings had herein, and

On motion of Mr. Julius Offenbach, solicitor and of counsel for the defendants in error above named, it is

ORDERED, that the plaintiff in error appear before the Supreme Court at the Capitol in the City of Washington, District of Columbia, on the 17th day of November, 1902, at 12 o'clock noon on that day, and show cause why the plaintiff in error

should not be required to file a bond or other security herein in the sum of one hundred and twenty-five thousand dollars to secure damages and costs herein, or why, in default thereof, the approval of the bond heretofore filed herein by the plaintiff in error should not be withdrawn and cancelled, and all proceedings based upon said bond vacated, and why the defendants in error should not have such other and further relief in the premises as may be just; and it is further

ORDERED, that service hereof on the solicitor for the plaintiff in error on or before November 14th, 1902, shall be sufficient,

Dated at Washington, District of Columbia, November 13th, 1902.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

33267

SUPREME COURT OF THE UNITED STATES.

ISBELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

STATE OF NEW YORK, *County of New York*, } ss.:

JULIUS OFFENBACH, being duly sworn, says: That he is solicitor for the defendants in error above named. This is a proceeding to appraise the property of Timothy B. Blackstone, deceased, the transfer of part of which was subject to tax under the Transfer Tax Laws of the State of New York (Chap. 908, L. 1896) and to fix and determine the amount of the tax thereon. The proceeding originated in the Surrogate's Court in and for the County of New York, in which Court an order was duly entered on the 20th day of February, 1901, determining the value of said property subject to tax by the State of New York at $4,553,609.58, and fixing the tax upon the several transfers thereof at the total sum of seventy-seven thousand

five hundred and thirty-six dollars. After sundry appeals, the Court of Appeals of the State of New York, on or about the 24th day of June, 1902, entered an order affirming the order of the Appellate Division of the Supreme Court of said State, which had affirmed said order of said Surrogate's Court; and to review said order of said Court of Appeals the plaintiff in error above named has sued out a writ of error to the Supreme Court of the United States Under the Tax Law of the State of New York in conformity with the provisions of which said proceeding has been conducted and said tax determined, a penalty of ten per cent. per annum is imposed for the non-payment of said tax from the 26th day of May, 1900, on which date the decedent whose estate is here involved died; and the full amount of said tax and penalty is at this date over ninety-six thousand five hundred dollars.

To collect said tax, the Tax Laws of the State of New York provide for a summary proceeding at the instance of the District Attorney for the County of New York, resulting in a judgment, which judgment is enforcible against any property belonging to the estate of decedent found within the State of New York. In connection with her writ of error herein, the plaintiff in error above named filed a bond in the sum of one thousand dollars only, in form to secure *damages and costs*, thus staying proceedings upon said order of the Court of Appeals, and acting as a *supersedeas* thereof. Said bond was fixed at said amount *ex parte*, and deponent believes that the same was fixed at so small an amount inadvertently, and without knowledge that the effect of said bond will be to stay proceedings to collect said tax and penalty thereon, as above set forth, which amount will be largely increased before this writ of error

can be heard by the Supreme Court of the United States. Deponent was informed by the solicitor for the plaintiff in error while this proceeding was pending in the Court of Appeals, that the property of said decedent, upon the transfer of which the aforesaid tax has been levied, had been removed since this proceeding was instituted, from the State of New York. In deponent's opinion it is indispensable for the protection of the rights of the State of New York, and of the defendants in error, speedily to prosecute proceedings to convert said order of the Court of Appeals into a judgment and to enforce and collect the same. In deponent's opinion the amount of said bond as filed by plaintiff in error is totally insufficient adequately to secure the amount involved in this proceeding and penalty thereon, which is not otherwise secured, and costs.

On October 30th, 1902, Mr. Justice Peckham, on deponent's application, granted an order requiring the plaintiff-in-error to show cause why he should not be required to file a bond or other security herein in he sum of $125,000, to secure damages and costs, or why in default thereof the approval of the bond heretofore filed herein by the plaintiff-in-error should not be withdrawn and canceled. On the return of said order, said application was not determined, but said Justice directed the same to be brought before the Supreme Court *in banc*, on an order to show cause.

WHEREFORE, the annexed order is prayed, for which no previous application has been made, except as aforesaid.

JULIUS OFFENBACH.

Subscribed and sworn to before me at the County of New York, this 12th day of November, Nineteen hundred and two.

HARRY MACK,
Notary Public,
[SEAL.] N. Y. County.

Office Supreme Court U. S.
FILED
NOV 17 1902
JAMES H. McKENNEY,
Clerk.

No. 423.

Affidavit &c.

Supreme Court of the United States.

Filed Nov. 17, 1902.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

against

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

OCTOBER TERM, 1902.

No. 423.

Affidavit and Return in opposition to Motion to Increase Penalty of Appeal Bond.

EDWARD W. SHELDON,
ROBERT WILKINSON,
Of Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

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Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902. No. 423.

Return on Behalf of Plaintiff in Error in Opposition to Motion to Increase Penalty of Appeal Bond.

Now comes the plaintiff in error pursuant to an order of the Honorable RUFUS W. PECKHAM, Associate Justice, dated November 13th, 1902, and for cause why the prayer of the defendants in error should not be granted and why the plaintiff in error should not be required to file a bond or other security herein in the sum of one hundred and twenty-five thousand dollars to secure damages and costs, or why, in default thereof, the approval of the bond heretofore filed herein should not be withdrawn and cancelled, and all proceedings based upon said bond vacated, respectfully shows to the Court :

I. The supersedeas bond for $1,000 approved August 4, 1902, and filed herein on August 15, 1902, is sufficient in amount and complies with the rules and practice of this Court.

Under Rule 29 of this Court "*Supersedeas* bonds in the circuit court must be taken, with good and sufficient surety, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including 'just damages for delay,' and costs and interest on the appeal."

"Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any department of the government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas, or all costs only where it is not a supersedeas as aforesaid."

R. S., 2d Ed., Sec. 1000.

"Writs of error from the Supreme Court to a State Court in cases authorized by law, shall be issued in the same manner and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

R. S., 2d Ed., Sec. 1003.

In the present case, the writ of error is issued to review the following order of the Surrogate's Court for the County of New York :

" At a Special Term of the Surrogates' Court held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 30th day of June, 1902.

Present, HON. ABNER C. THOMAS, Surrogate.

IN THE MATTER

OF

the Appraisal under the Act in relation to Taxable Transfers of property, of the property of TIMOTHY B. BLACKSTONE, deceased.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased, having duly appealed to the Court of Appeals from the order herein of the Appellate Division of the Supreme Court for the First Judicial Department, entered in the office of the Clerk of said Court on the first day of March, 1902, which reversed the order herein of the Surrogates' Court of the County of New York, entered in the office of the Clerk of said Surrogates' Court on the 26th day of July, 1901, and affirmed the order herein of said Surrogates' Court entered in the office of the Clerk thereof on the 20th day of February 1901, and the Court of Appeals having sent down the record of said Appeal and the proceedings in said Court to the Surrogates' Court of New York County, here to be proceeded upon according

to law, whereby it appears that upon said appeal the Court of Appeals ordered that said order of the Appellate Division of the Supreme Court, First Department herein appealed from should be affirmed with costs of said appeal to the respondent, the Comptroller of the City of New York.

Now, on reading and filing the remittitur of the Court of Appeals herein, and the costs of the respondent on said appeal having been duly taxed at the sum of $139.68 dollars, and on motion of Julius Offenbach, attorney for the Comptrollers of the State and City of New York, it is

Ordered, that said order of this Court of Appeals be, and the same hereby is, made the order of this Court, and that the order herein of the Appellate Division of the Supreme Court, First Department, appealed from as aforesaid, be, and the same hereby is, affirmed, with One hundred and thirty-nine 68/100 Dollars costs of said appeal, to the Comptroller of the City of New York."

ABNER C. THOMAS,
Surrogate.

The order of the Appellate Division, which was thus affirmed, read as follows :

"At a Stated Term of the Appellate Division of the Supreme Court, First Department, held at the Appellate Division Court House, in the County of New York, on the 7th day of February, 1902.

Present :

HON. CHARLES H. VAN BRUNT, P. J.
HON. MORGAN J. O'BRIEN,
HON. GEORGE L. INGRAHAM,
HON. EDWARD W. HATCH,
} JJ.

In the Matter

of

The Appraisal under the Act in Relation to Taxable Transfers of Property, of the property of Timothy B. Blackstone, deceased,

Comptroller of the City of New York,

Appellant,

Isabella F. Blackstone, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,

Respondent.

An appeal having been duly taken to the Appellate Division of the Supreme Court, First Department, in the name of the Comptroller of the City of New York, from the order of the Surrogate's Court of the County of New York entered herein and filed in the Office of the Clerk of the said Surrogate's Court on the 26th day of July, 1901, which reversed the order of said Surrogate's Court entered in the office of the Clerk thereof on the 20th day of February, 1901, on the report of Charles B. Page, appraiser herein, and declared transfers of the property of the decedent above named exempt from any transfer tax under the laws of the State of New York, and said appeal duly coming on to be heard,

And after hearing Thomas Penney, of counsel for the Comptroller of the City of New York, in support of said appeal, and Edward W. Sheldon,

of counsel for respondent in opposition thereto, and due deliberation having been had,

On motion of Julius Offenbach, attorney for appellant, it is

Ordered, that the order of the Surrogate's Court of the County of New York appealed from, be, and the same hereby is reversed, with ten dollars costs and disbursements to the appellant, and the order of said Surrogate's Court entered in the office of the Clerk thereof on the 20th day of February, 1901, be, and the same hereby is, affirmed."

The order of the Surrogate's Court thus reversed was in this form:—

"At a Surrogate's Court held in and for the County of New York, at the County Court House in the County of New York, on the 26th day of July, 1901.

Present—The HONORABLE FRANK T. FITZGERALD, Surrogate.

IN THE MATTER

OF

The Appraisal under the Act in relation to Taxable Transfers of Property, of the property of TIMOTHY B. BLACKSTONE, deceased.

The Comptroller of the City of New York having heretofore filed his petition herein, dated November 10, 1900, for the appointment of some competent person to appraise the property passing

by the will of Timothy B. Blackstone, the decedent above named, or such part thereof as might be subject to taxation under the laws of the State of New York in relation to taxable transfers of property, and an order having on November 12, 1900, been entered, directing Charles B. Page to fix the fair market value at the time of the transfer of the property which was of the above-named decedent and which was subject to the payment of any tax imposed by Article X of Chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto; and the said appraiser having on February 19, 1901, filed his report herein; and an order having thereupon been entered herein February 20, 1901, declaring that the cash value of the property passing by the will of said decedent to the legatees thereunder was as follows, viz: Ellen B. Plant, niece, $25,000; William L. Harrison, grandnephew, $30,000; Paul Harrison, grandnephew, $30,000; Gertrude Harrison, grandniece, $20,000; George Blackstone, nephew, $50,000; Adelaide Blackstone, niece, $20,000; Emma Pond, niece, $20,000; William N. Blackstone, nephew, $250,000; Harriet B. Camp, niece, $25,000; Frances Ella Huntington, niece, $25,000; Lorenzo Blackstone, grandnephew, $25,000; Morton F. Plant, nephew, $10,000; William J. Bryson, stranger, $15,000; Susan E. Jones, stranger, $5,000; James Blackstone Memorial Library Association of Branford, Connecticut, $100,000; Art Institute of Chicago, $25,000; Chicago Orphan Asylum, $25,000; Home of the Friendless, Chicago, $25,000; St. Luke's Hospital, Chicago, $25,000; Passavant Memorial Hospital, Chicago, $25,000; Chicago Relief and Aid Society, Chicago, $25,000; and Isabella F. Blackstone, widow, $3,753,609.58, and that the tax to which said legacies were liable on such transfer was at the rate of five per cent. of such value upon the legacies to said collateral relatives and strangers, and one per cent. upon the legacy to said widow; and said Isabella F. Black-

stone, individually and as executrix of the last will and testament of Timothy B. Blackstone, having appealed to the Surrogates of the County of New York from said order of February 20, 1901; now upon reading and filing the petition for the appointment of said appraiser, the oath of said appraiser, the notice of appraisal, the notice of appearance and protest of said Isabella F. Blackstone, the report of said appraiser, the testimony taken before said appraiser, the answer of said Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, to said petition, with the exhibits annexed to said answer, the affidavit of Henry L. Thornell, verified January 10th, 1901, the affidavits of William J. Bryson and Albert Wick, verified January 9th, 1901, the notice of entry of order assessing tax, and the order assessing tax, and the notice of appeal therefrom, and after hearing Edward W. Sheldon, Esq., of counsel for Isabella F. Blackstone, individually and as executrix of Timothy B. Blackstone, deceased, and Julius Offenbach, Esq., of counsel for the Comptroller of the City of New York, respondent; now on motion of Edward W. Sheldon, attorney for Isabella F. Blackstone, individually and as executrix, &c., of Timothy B. Blackstone, deceased, it is

"Ordered that the order entered herein February 20, 1901, be and the same hereby is reversed, and said transfers are, and each of them is hereby, declared to be exempt from any transfer tax under the laws of the State of New York."

This Surrogate's order of February 20, 1901, had been entered as of course upon the appraiser's report, and read as follows:

"At a Surrogate's Court, held in and for the County of New York, at the County Court House, in the County of New York, on the 20th day of February, 1901.

Present—The Honorable Abner C. Thomas,
Surrogate.

In the Matter

of

The Appraisal Under the Act in Relation to taxable Transfers of Property, of the property of Timothy B. Blackstone, deceased.

Upon reading and filing the report of Charles B. Page, the Appraiser herein, dated the 19th day of February, 1901, it is

Ordered, that the cash value at the date of decedent's death of the property, the transfer of which is liable to taxation in this proceeding, and the tax to which the same is liable, are as follows:

Name of Beneficiary.	Cash Value.	Tax.
Ellen B. Plant, niece	$25,000	$1,250.00
William L. Harrison, grandnephew	30,000	1,500.00
Paul Harrison, grandnephew	30,000	1,500.00
Gertrude Harrison, grandniece	20,000	1,000.00
George Blackstone, nephew	50,000	2,500.00
Adelaide Blackstone, niece	20,000	1,000.00
Emma Pond, niece	20,000	1,000.00
William N. Blackstone, nephew	250,000	12,500.00
Harriet B. Camp, niece	25,000	1,250.00

Name of Beneficiary.	Cash Value.	Tax.
Frances Ella Huntington, niece	25,000	1,250.00
Lorenzo Blackstone, grandnephew	25,000	1,250.00
Morton F. Plant, nephew	10,000	500.00
William J. Bryson, stranger	15,000	750.00
Susan E. Jones, stranger	5,000	250.00
James Blackstone Memorial Library Association of Branford, Connecticut	100,000	5,000.00
Art Institute of Chicago	25,000	1,250.00
Chicago Orphan Asylum	25 000	1,250.00
Home of the Friendless, Chicago	25,000	1,250.00
St. Luke's Hospital, Chicago	25,000	1.250.00
Passavant Memorial Hospital, Chicago	25,000	1,250.00
Chicago Relief and Aid Society, Chicago	25,000	1,250.00
Isabella F. Blackstone, widow	3,753,609.58	37,536.00 "

It thus appears that the only amount recovered by the judgment or decree to be reviewed herein is $139.68. The Surrogate's first order of February 20, 1901, is not a judgment for money. It finally determines the amount of property passing under the will of the decedent and the amount of tax to which such property is subject, but it does not determine by whom such tax is to be paid, and upon it no execution can issue. The order would be in precisely the same form if all the taxes were directed by the will to be paid by the residuary legatee. Before any personal liability for the payment of these taxes can be imposed a separate proceeding by the District Attorney of New York

County is required under the following provisions of the New York Transfer Tax Law:

"SEC. 235. Proceedings for the collection of taxes. If the county treasurer or state comptroller shall have reason to believe that any tax is due and unpaid in a county in which he is authorized to receive the tax under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why tax should not be paid. The surrogate, upon such an application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citation out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, county treasurer, or the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree

after the collection and payment of the tax to the county treasurer or state comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the county treasurer or the state comptroller all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or the state comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or state comptroller therein, and to direct such county treasurer in a county in which the office of appraiser is not salaried to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax, and in any other county the state comptroller shall pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents, which estates have been concealed or the taxes thereon evaded, the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected. And the comptroller of the state is hereby authorized, with the approval of the attorney-general and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and set-

tle the amount of such tax in any case where controversies have arisen or may hereafter arise as to the relationship of the beneficiaries to the former owner thereof."

Before any money judgment can be entered it will thus be seen that an independent proceeding must be instituted, a citation issued to and served upon all the parties interested, an opportunity to interpose defences given, a hearing had in court and a decree entered. In their moving affidavit herein the defendants in error speak of this separate proceeding as converting the order appealed from into a judgment. They thus admit that the order is not now a judgment. Until such decree has been obtained the persons liable to pay the taxes are not determinable.

That the foregoing views are in accordance with the practice of this Court will, we think, be shown by the nature of the security required by this Court in recent similar tax cases :

(*a*) Scudder v. Comptroller, 175 U. S., 321 (1898).

Error to the Surrogates Court of the County of New York to review a judgment on remittitur affirming an order fixing a transfer tax of more than $2,000, with costs.

Supersedeas bond, $500.

(*b*) New York State v. Barker, 179 U. S., 279 (1900).

Error to review a decree dismissing writ of *certiorari* to review a personal tax assessment of more than $5,000.

Supersedeas bond, $500.

(*c*) Magoun v. Illinois Trust and Savings Bank, 170 U. S., 283 (1897).

Appeal from decree of United States Circuit Court for the Northern District of Illinois, dismissing a suit to enjoin the collection of an in-

heritance tax of more than $5,000 under the laws of Illinois.

Supersedeas bond, $500.

(*d*) Sawyer v. Kochersperger, 170 U. S., 303 (1897).

Error to Circuit Court for the Northern District of Illinois to review judgment for defendant for inheritance tax of $6970.

Supersedeas bond, $500.

II. The established rule of this Court is that upon the facts existing at the time the security was accepted, the action of the Justice within the statute and within the rule of practice is, in the absence of fraud, final, and it will be presumed that every fact was presented to him that could have been presented.

Jerome v. McCarter, 21 Wallace, 17, 31.
Draper v. Davis, 102 U. S., 370.
Ex parte French, 100 U. S., 1, 5.
Railroad Co. v. Schutte, 100 U. S., 644, 646.
Martin v. Hazard Hotel Co., 93 U. S., 302.

The moving papers here set up no change in the circumstances of the case, or of the parties or of the surety upon the bond, since the allowance of the bond herein, and the annexed answering affidavit of the solicitor for the plaintiff in error shows that nothing has occurred since that time which can in any way prejudice the defendants in error.

The sole purpose of the plaintiff in error has been to secure a speedy and final determination of the important questions involved in this cause, and in all her procedure she has endeavored to comply strictly with the rules and practice of this Court. If in any respect the Court deems that the interests of the defendants in

error require further protection, the plaintiff in error will immediately comply with any suggestion the Court may make. The interests not only of the plaintiff in error, but of many other citizens of the country will be served by the early settlement of the questions raised herein.

III. The relief demanded by the defendants in error should be denied.

Dated November 15, 1902.

Respectfully submitted,

EDWARD W. SHELDON,

ROBERT WILKINSON,

Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

ISABELLA F. BLACKSTONE individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902, No. 423.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

EDWARD W. SHELDON, being duly sworn, says:

FIRST. That he is the solicitor for the plaintiff in error herein; that the writ of error and citation herein were granted by the Honorable RUFUS W. PECKHAM, Associate Justice, on August 4, 1902; that a bond in the penalty of $1,000, with the American Surety Company of New York as surety, was approved by such Justice on the same day, after a full statement of the facts and circumstances of the case, and that the record and proceedings herein were filed in the office of the Clerk at Washington on August 15th, 1902.

SECOND. Deponent denies that he ever informed the solicitor for the defendants in error herein that the prop-

erty of Timothy B. Blackstone had been removed from the State of New York, as alleged in the affidavit of said solicitor, verified November 12th, 1902, attached to the motion papers herein. On the contrary, deponent is informed and believes that in addition to large amounts of other property the plaintiff in error is possessed, and has continuously since the death of said Timothy B. Blackstone in May, 1900, been possessed of more than enough property in the State of New York to pay any tax that may be levied pursuant to the proceedings sought to be reviewed herein.

THIRD That the plaintiff in error is anxious to prosecute the writ of error with all possible diligence; that the solicitor for the defendants in error promised deponent in September, 1902, that he, the said solicitor, would join with deponent in asking the Court to advance this cause for argument; that deponent thereupon prepared motion papers to secure such advance, but the solicitor for the defendants in error refused to join in such motion; that the reason assigned by said solicitor for such refusal was his fear that if the Court advanced the cause, it might be reached for argument before he could prepare his brief; that deponent a few days later renewed his request that such joint motion be made; that this request was again denied; that thereafter and on November 1, 1902, deponent was served with Mr. Justice PECKHAM'S order to show cause why the approval of the appeal bond herein should not be canceled; that deponent thereafter gave notice of an application to the Court on Monday, November 10th, 1902, to advance said cause, and that such motion is still pending and undetermined.

FOURTH. That in anticipation of the appeal herein the plaintiff in error was willing to pay, under protest, the amount of the tax claimed by the State of New York, but was advised by deponent that under the terms of the New York Transfer Tax law there was doubt as to whether an ap-

plication to refund the amount of taxes erroneously paid must not be made within two years from the date of entry of the order fixing the tax, and that in the present case such period of two years would expire February 21st, 1903; that since the entry of the order of the Court of Appeals of the State of New York and the order of the Surrogates' Court of the County of New York made thereon and dated June 30th, 1902, there has been no change in the circumstances of the case or of the parties or of the surety on the bond, which would prejudice or affect the right of the State of New York to collect any tax that may finally be adjudged to be due herein; that the plaintiff in error is willing to give any additional bond that may be required by the Court herein, but that deponent believes that the penalty of the bond already given herein was fixed in complete accordance with the rules and practice of this Court, and is sufficient.

EDWARD W. SHELDON.

Subscribed and sworn to before me this 15th day of November, 1902.

DANIEL MOYNAHAN,
Notary Public,
Kings County.

{ Notary Public's Seal }

Certificate filed in New York County.